

SUBJECT: Continuing the Texas Medical Board

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Lucio, Ortega,
Price, Sheffield

1 nay — Zedler

1 absent — Coleman

WITNESSES: For — Sheila Page, Texas Association of American Physicians and Surgeons; Michelle Berger, Texas Medical Association; (*Registered, but did not testify*: Nora Belcher, Texas E-Health Alliance; Brian Dittmar, Texas Medical Liability Trust; Bonnie Bruce, Texas Society of Anesthesiologists)

Against — Lawrence Broder; Coleman Hemphill; Richard Massey; Damaris McMalley; Jerome Young

On — Erick Fajardo, Sunset Advisory Commission; Stephen Carlton and Megan Goode, Texas Medical Board; Sheila Hemphill, Texas Right To Know

BACKGROUND: The Texas Medical Board (TMB) licenses and regulates medical practitioners in the state. The board's mission is to protect and enhance the public's health and safety by establishing and maintaining standards of care used in regulating the practice of medicine and ensuring quality health care for Texans through licensure, discipline, and education. In addition to medical licensing and regulation, the medical board also:

- registers and inspects pain management clinics and physicians who perform office-based anesthesia;
- investigates and resolves complaints;
- takes disciplinary action to enforce the board's statutes and rules; and

- monitors compliance with disciplinary orders.

Governing structure. TMB houses four other boards and three advisory committees, with TMB exercising its own policymaking and oversight over the associated boards and committees' rulemaking. TMB is composed of 19 governor-appointed members, including 12 Texas-licensed physicians and seven public members. The Physician Assistant Board, Board of Acupuncture Examiners, Board of Medical Radiologic Technology, and Board of Respiratory Care each consist of nine governor-appointed members.

The advisory committees for perfusionists and medical physicists each have seven members, and the committee for surgical assistants has six. All members of these committees are appointed by the medical board's president.

Staffing. In fiscal 2018, the Legislature lowered the medical board's cap on staff positions by two to 199. The board currently employs about 185 full-time staff, about 20 percent of whom work outside of Austin, with investigators and compliance officers located in five regions across the state.

Funding. In fiscal 2017, the medical board operated on a budget of about \$13.9 million and collected about \$29.6 million in licensing and renewal fees.

The Texas Medical Board last underwent Sunset review during the 2016-2017 review cycle, during which the 85th Legislature enacted some, but not all, of the Sunset Advisory Commission's recommendations. The 2018-19 Sunset review is limited to the remaining recommendations.

The board would be discontinued on September 1, 2019, unless continued in statute.

DIGEST: CSHB 1504 would continue the Texas Medical Board (TMB), amend TMB's licensure and enforcement processes, establish a radiologist

assistant certificate, and update training for other boards. TMB would be subject to the Texas Sunset Act and would be discontinued on September 1, 2031, unless continued in statute.

Changes in licensing requirements. CSHB 1504 would amend licensure requirements and require the medical board to establish an expedited licensing process for certain applicants.

Background checks. The bill would require the medical board and the Board of Acupuncture Examiners to conduct fingerprint background checks for applicants for licenses and license renewals in the acupuncture and surgical assistant professions.

By September 1, 2021, the medical and acupuncture boards would be required to obtain criminal history record information for persons who, on the bill's effective date, held acupuncture or surgical assistant licenses but who had not undergone fingerprint background checks on their initial license applications.

Expedited licensure. The bill would require the medical board by rule to establish an expedited licensing process for out-of-state applicants who met certain examination requirements.

Enforcement processes.

Inspections and complaint investigations. The bill would require the medical board to maintain a record of the outpatient settings in which physicians provided anesthesia. TMB could establish a risk-based process for its office-based anesthesia inspections in which the board conducted inspections based on the length of time since the equipment and outpatient setting were last inspected and the physician's last inspection.

The bill would authorize the medical board, for good cause, to extend a preliminary complaint investigation for a maximum of 15 days after the required completion date. The bill also would remove a requirement that a formal complaint submitted to TMB be a written affidavit.

Disciplinary actions and proceedings. The bill would allow the board to appeal an administrative law judge's findings of fact and conclusions of law by filing suit in a Travis County district court before the 31st day after the findings and conclusions were issued. After the district court issued a final order, the board would issue a final order in the case based on the court's final order. The bill would prohibit the respondent from appealing a sanction ordered by the board unless the sanction exceeded the board's published sanctions guidelines.

The bill would revise informal proceedings. Regarding allegations that a license holder violated the standard of care, the panel conducting the informal proceeding would have to consider whether the physician was practicing complementary and alternative medicine. Before providing a copy of each report alleging a license holder had violated the standard of care, the medical board would have to redact any identifying information of an expert physician reviewer other than the reviewer's specialty. The board would be required to adopt new rules necessary to implement the above changes by March 1, 2020.

The bill would prohibit TMB from issuing a remedial plan to resolve a complaint against a license holder more than once every five years.

Physician profiles. The bill would require a physician's board-created public profile to be updated with certain information after:

- a formal complaint was filed against the physician;
- the board issued a final order regarding a formal complaint against the physician;
- the board dismissed a formal complaint against the physician; or
- after the board resolved an investigation and took no action.

In each case, the profile would have to be updated no later than the 10th working day after the action was taken.

On or after the fifth anniversary of the date a remedial plan was issued for

a physician, the board would be permitted to remove information regarding the plan from the physician's profile unless the complaint was related to the delivery of health care or more than one remedial plan had been issued to resolve complaints alleging the same violation by the physician, including a complaint unrelated to the delivery of health care.

Radiology. CSHB 1504 would define radiologist and radiologist assistant and establish a radiologist assistant certificate. "Radiologist" would mean a physician specializing in radiology certified by or board-eligible for certain radiology boards. "Radiologist assistant" would mean a certified advanced-level medical radiologic technologist.

The bill would require the medical radiologic technology board by January 1, 2020, to establish by rule the required education and training for a person to obtain a radiologist assistant certificate. A person who held this certificate would be allowed to perform radiologic procedures under a radiologist's supervision and could not interpret images, make diagnoses, or prescribe any medication or therapy.

Texas Physician Health Program. By January 1, 2020, the bill would require the governing board of the Texas Physician Health Program and the medical board to enter into and adopt by rule a memorandum of understanding to better coordinate services and operations of the program. The memorandum would have to:

- establish performance measures for the program, including the number of participants who successfully complete the program;
- include a list of program services the board would provide; and
- require that an internal program audit be conducted at least once every three years.

The bill would permit the program's governing board to accept gifts, grants, donations, or other things of value from any source, including the United States or a private source, for the program.

Board training. The bill would revise training requirements for members

on the TMB, acupuncture, medical radiologic technology, and respiratory care boards. The bill would update each board's required training for current and new members to include information about the scope of and limitations on each board's rulemaking authority. Existing board members would have to complete training not previously completed by December 1, 2019. The executive director of the medical board would be required to create and distribute annually copies of the board's training manual to each respective board member.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 1504 would protect and promote the public health and safety of Texans by continuing the Texas Medical Board (TMB) and improving the board's licensure and enforcement procedures. There is a continuing need to regulate physicians and allied health practitioners to ensure compliance with standards of care.

Background checks. The bill would ensure TMB could effectively monitor all licensees for criminal conduct. Currently, the medical board requires fingerprint-based background checks on all applicants for licensure, but it lacks explicit statutory authority to do so for surgical assistants and acupuncturists. Allowing TMB to perform these background checks for all applicants would ensure consistency between statutory authority and board practices.

Expedited licensure. Establishing an expedited licensing process for physicians would increase mobility within the profession and would help recruit qualified out-of-state physicians. The medical board's current reciprocity process is cumbersome, requiring applicants and board staff to make considerable efforts to satisfy licensing requirements, which can delay physicians' ability to fill immediate health care needs in Texas. Given the state's physician shortages in multiple areas, particularly in rural and underserved areas, the state should encourage more physicians to practice in Texas. Expediting the licensing process for out-of-state physicians would improve access to care while relieving the board's increasing administrative workload.

Inspections and complaint investigations. Allowing the medical board to establish a risk-based approach for its office-based anesthesia inspections would prevent unnecessary disruptions of a physician's practice and duplicate inspections within a short timeframe and would preserve the board's time and resources. A risk-based inspection process would allow the board to focus its efforts on where they are needed most.

Removing the unnecessary affidavit requirement from statute would make filing complaints against licensees easier while maintaining the prohibition on filing a false complaint.

Disciplinary actions and proceedings. Redacting certain identifying information of an expert physician reviewer in the report containing allegations against a license holder would ensure expert anonymity, protect the integrity of the report, and encourage robust physician participation in expert panels.

Texas Physician Health Program. The Texas Physician Health Program, which is the state's peer assistance program, continues to be inhibited by its unclear arrangement with TMB and limited funding sources. Requiring TMB and the program to establish a memorandum of understanding covering services and operations and allowing the program to accept certain funds would help the program achieve its mission of helping licensees safely return to practice. Clarifying the relationship between the program and medical board would help ensure consistency even as staff at each entity changed and would provide additional transparency.

OPPONENTS
SAY:

CSHB 1504 would continue the Texas Medical Board (TMB) with a lack of sufficient due process for physicians and consumers, potentially leaving Texans at risk.

Inspections and complaint investigations. The bill should require TMB to include a plain-language description of an alleged violation in the notice provided by the board to a license holder. This would ensure licensees had context and more accurate information about the complaint,

which could help them formulate a more meaningful response to the complaint.

The bill should establish a confidential process for the public and physicians to file complaints against the medical board so that individuals would not be afraid to file such complaints against an agency as powerful as TMB. The process should prevent the medical board from taking retaliatory action against the complainant, unless it can be proven that the complaint was made in bad faith.

Disciplinary actions and proceedings. The bill should require TMB to disclose to the physician who is the subject of a review all information or evidence in the board's possession, including exculpatory evidence. This would ensure a licensee had all available information when preparing a case or weighing settlement options and that the board considered all information when making a decision regarding a physician's license to practice.

NOTES:

According to the Legislative Budget Board, CSHB 1504 would have an estimated positive fiscal impact of \$15,000 in general revenue related funds through the fiscal 2020-21 biennium.